

**ROADS ON PUBLIC LANDS**

2000 GENERAL SESSION

STATE OF UTAH

**Sponsor: Leonard M. Blackham**

AN ACT RELATING TO TRANSPORTATION; PROVIDING FOR JOINT TITLE TO CERTAIN HIGHWAY RIGHTS-OF-WAY BY THE STATE AND LOCAL GOVERNMENTS; PROVIDING FOR THE SCOPE OF CERTAIN RIGHT-OF-WAYS; PROVIDING DEFINITIONS; AND PROVIDING AN EFFECTIVE DATE.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

**72-3-102**, as renumbered and amended by Chapter 270, Laws of Utah 1998

**72-3-103**, as renumbered and amended by Chapter 270, Laws of Utah 1998

**72-3-104**, as renumbered and amended by Chapter 270, Laws of Utah 1998

**72-3-105**, as renumbered and amended by Chapter 270, Laws of Utah 1998

**72-3-108**, as enacted by Chapter 270, Laws of Utah 1998

**72-5-103**, as renumbered and amended by Chapter 270, Laws of Utah 1998

**72-5-104**, as renumbered and amended by Chapter 270, Laws of Utah 1998

**72-5-301**, as renumbered and amended by Chapter 270, Laws of Utah 1998

**72-5-302**, as renumbered and amended by Chapter 270, Laws of Utah 1998

*Be it enacted by the Legislature of the state of Utah:*

Section 1. Section **72-3-102** is amended to read:

**72-3-102. State highways -- Class A state roads.**

(1) State highways comprise highways, roads, and streets designated under Chapter 4, Designation of State Highways.

(2) State highways are class A state roads.

(3) The state has title to all rights-of-way for all state highways.

~~(3)~~ (4) The department has jurisdiction and control over all state highways.

~~(4)~~ (5) The department shall construct and maintain each state highway using funds made available for that purpose.

Section 2. Section **72-3-103** is amended to read:

**72-3-103. County roads -- Class B roads -- Construction and maintenance by counties.**

(1) County roads comprise all public highways, roads, and streets within the state that:

- (a) are situated outside of incorporated municipalities and not designated as state highways;
- (b) have been designated as county roads; or
- (c) are located on property under the control of a federal agency and constructed or

maintained by the county under agreement with the appropriate federal agency.

(2) County roads are class B roads.

(3) The state and county have joint undivided interest in the title to all rights-of-way for all county roads.

~~[(3)]~~ (4) The county governing body ~~[has]~~ exercises sole jurisdiction and control of county roads within the county.

~~[(4)]~~ (5) The county shall construct and maintain each county road using funds made available for that purpose.

~~[(5)]~~ (6) The county legislative body may expend funds allocated to each county from the Transportation Fund under rules made by the department.

~~[(6)]~~ (7) A county legislative body may use any portion of the class B road funds provided by this chapter for the construction and maintenance of class A state roads by cooperative agreement with the department.

~~[(7)]~~ (8) A county may enter into agreements with the appropriate federal agency for the use of federal funds, county road funds, and donations to county road funds to construct, improve, or maintain county roads within or partly within national forests.

Section 3. Section **72-3-104** is amended to read:

**72-3-104. City streets -- Class C roads -- Construction and maintenance.**

(1) City streets comprise:

(a) highways, roads, and streets within the corporate limits of the municipalities that are not designated as class A state roads or as class B roads; and

(b) those highways, roads, and streets located within a national forest and constructed or

maintained by the municipality under agreement with the appropriate federal agency.

(2) City streets are class C roads.

(3) Except for city streets within counties of the first and second class as defined in Section 17-16-13, the state and city have joint undivided interest in the title to all rights-of-way for all city streets.

~~[(3)]~~ (4) The municipal governing body ~~[has]~~ exercises sole jurisdiction and control of the city streets within the municipality.

~~[(4)]~~ (5) The department shall cooperate with the municipal legislative body in the construction and maintenance of the class C roads within each municipality.

~~[(5)]~~ (6) The municipal legislative body shall expend or cause to be expended upon the class C roads the funds allocated to each municipality from the Transportation Fund under rules made by the department.

~~[(6)]~~ (7) Any town or city in the third class may:

(a) contract with the county or the department for the construction and maintenance of class C roads within its corporate limits; or

(b) transfer, with the consent of the county, its:

(i) class C roads to the class B road system; and

(ii) funds allocated from the Transportation Fund to the municipality to the county legislative body for use upon the transferred class C roads.

~~[(7)]~~ (8) A municipal legislative body of any municipality of the third class may use any portion of the class C road funds allocated to the municipality for the construction of sidewalks, curbs, and gutters on class A state roads within the municipal limits by cooperative agreement with the department.

Section 4. Section **72-3-105** is amended to read:

**72-3-105. Class D roads -- Maps to be prepared by county -- Indication of roads.**

(1) As used in this section, "class D road" means any road, way, or other land surface route that has been or is established by use or constructed and ~~[is]~~ has been maintained to provide ~~[reasonably passable]~~ for usage by the public for vehicles with four or more wheels that is not a class

A, class B, or class C road under this title.

(2) Each class D road is part of the highway and road system within the state with the same force and effect as if the class D road had been included within this system upon its being first established or constructed.

(3) The state and county have joint undivided interest in the title to all rights-of-way for class D roads.

(4) The county governing body exercises sole jurisdiction and control of class D roads within the county.

~~[(3)]~~ (5) Each county shall prepare maps showing to the best of its ability the class D roads within its boundaries which were in existence as of October 21, 1976. Preparation of these maps may be done by the county itself or through any multi-county planning district in which the county participates. ~~[A county shall be given a minimum of two years to complete mapping of the class D roads within its boundaries.]~~

~~[(4)]~~ (6) Any class D road which is established or constructed after October 21, 1976, shall be reflected on maps prepared as provided in Subsection ~~[(3)]~~ (5).

~~[(5)]~~ (7) The county shall provide a copy of any map under Subsection ~~[(3) or (4)]~~ (5) or (6) upon completion to the department.

~~[(6)]~~ (8) The department shall scribe each road shown on its own county map series. The department is not responsible for the validity of any class D road and is not responsible for its being inventoried. The department shall also keep on file an historical map record of the roads as provided by the counties.

Section 5. Section **72-3-108** is amended to read:

**72-3-108. County roads -- Vacation and narrowing.**

(1) A county may, by ordinance, vacate, narrow, or change the name of a county road without petition or after petition by a property owner.

(2) A county may not vacate a county road unless notice of the hearing is:

(a) published in a newspaper of general circulation in the county once a week for four consecutive weeks prior to the hearing; or

(b) posted in three public places for four consecutive weeks prior to the hearing; and [is]

(c) mailed to the department and all owners of property abutting the county road.

(3) The right-of-way and easements, if any, of a property owner and the franchise rights of any public utility may not be impaired by vacating or narrowing a county road.

(4) Except as provided in Section 72-5-305, if a county vacates a county road, the state's right-of-way interest in the county road is also vacated.

Section 6. Section **72-5-103** is amended to read:

**72-5-103. Acquisition of rights-of-way and other real property -- Title to property acquired.**

(1) The department may acquire any real property or interests in real property necessary for temporary, present, or reasonable future state highway purposes by gift, agreement, exchange, purchase, condemnation, or otherwise.

(2) (a) Title to real property acquired by the department or the counties, cities, and towns by gift, agreement, exchange, purchase, condemnation, or otherwise for highway rights-of-way or other highway purposes may be in fee simple or any lesser estate or interest.

(b) If the highway is a county road, city street under joint title as provided in Subsection 72-3-104(3), or right-of-way described in Title 72, Chapter 5, Part 3, Rights-of-way Across Federal Lands Act, title to all interests in real property less than fee simple held under this section is held jointly by the state and the county, city, or town holding the interest.

(3) A transfer of land bounded by a highway on a right-of-way for which the public has only an easement passes the title of the person whose estate is transferred to the middle of the highway.

Section 7. Section **72-5-104** is amended to read:

**72-5-104. Public use constituting dedication -- Scope.**

(1) A highway [~~shall be deemed to have been~~] is dedicated and abandoned to the use of the public when it has been continuously used as a public thoroughfare for a period of ten years.

(2) The dedication and abandonment creates a right-of-way held by the state in accordance with Sections 72-3-102, 72-3-104, 72-3-105, and 72-5-103.

(3) The scope of the right-of-way is that which is reasonable and necessary to ensure safe

travel according to the facts and circumstances.

Section 8. Section **72-5-301** is amended to read:

**72-5-301. Definitions.**

As used in this part:

(1) "Acceptance," "acceptance of a right-of-way for the construction of a highway over public lands, not reserved for public uses," or "accepted" means one or more of the following acts prior to October 21, 1976:

(a) by the state or any political subdivision of the state:

(i) construction or maintenance of a highway;

(ii) inclusion of the highway in a state, county, or municipal road system;

(iii) expenditure of any public funds on the highway;

(iv) execution of a memorandum of understanding or other agreement with any other public or private entity or an agency of the federal government that recognizes the right or obligation of the state or a political subdivision of the state to construct or maintain the highway or a portion of the highway; or

(v) (A) the acceptance at statehood of the school or institutional trust lands accessed or traversed by the right-of-way; or

(B) the selection and receipt by the state of a clear list, indemnity list, or other document conveying title to the state of school, institutional trust lands, or other state lands accessed or traversed by the highway;

(b) use by the public for a period in excess of 10 years in accordance with Section 72-5-104;

or

(c) any other act consistent with state or federal law indicating acceptance of a right-of-way.

(2) (a) "Construction" means any physical act of readying a highway for use by the public according to the available or intended mode of transportation, including, foot, horse, vehicle, pipeline, or other mode.

(b) "Construction" includes:

(i) removing vegetation;

- (ii) moving obstructions, including rocks, boulders, and outcroppings;
- (iii) filling low spots;
- (iv) maintenance over several years;
- (v) creation of an identifiable route by use over time; and
- (vi) other similar activities.

(3) (a) "Highway" means:

(i) any road, street, trail, or other access or way that is open to the public to come and go or transport water at will, without regard to how or by whom the way was constructed or maintained; and

(ii) appurtenant land and structures including road drainage ditches, back and front slopes, turnouts, rest areas, and other areas that facilitate use of the highway by the public.

(b) "Highway" includes:

(i) pedestrian trails, horse paths, livestock trails, wagon roads, jeep trails, logging roads, homestead roads, mine-to-market roads, alleys, tunnels, bridges, and all other ways and their attendant access for maintenance; and

(ii) irrigation canals, waterways, viaducts, ditches, pipelines, or other means of water transmission and their attendant access for maintenance.

(4) "Maintenance" means any physical act of upkeep of a highway or repair of wear or damage whether from natural or other causes[-], including the following:

(a) vertical and horizontal alignment alterations to meet applicable safety standards;

(b) widening an existing road or flattening of shoulders or side slopes to meet applicable safety standards;

(c) grooming and grading of the previously constructed road surface;

(d) establishing and maintaining the road crown with materials gathered along the road;

(e) filling ruts;

(f) spot filling with the same materials of the road, or improved materials;

(g) leveling or smoothing washboards;

(h) clearing the roadway of obstructing debris;

- (i) cleaning culverts, including head basins and outlets;
- (j) resurfacing with the same or improved materials;
- (k) installing, maintaining, repairing and replacing rip rap;
- (l) maintaining drainage;
- (m) maintaining and repairing washes and gullies;
- (n) installing, maintaining, repairing, and replacing culverts as necessary to protect the existing surface from erosion;
- (o) repairing washouts;
- (p) installing, maintaining, repairing and replacing marker posts;
- (q) installing, maintaining, and repairing water crossings;
- (r) installing, maintaining, and repairing and replacing cattle guards;
- (s) installing, maintaining, and repairing and replacing road signs;
- (t) installing, maintaining, and repairing and replacing road striping;
- (u) repair, stabilization and improvement of cut and fill slopes;
- (v) application of seal coats; or
- (w) snow removal.

(5) "Public lands not reserved for public uses" means any federal lands open to entry and location.

(6) "R.S. 2477 right-of-way" means a right-of-way for a highway constructed in this state on public lands not reserved for public uses in accordance with Revised Statute 2477, codified as 43 U.S.C. Section 932, and accepted by the state or a political subdivision of the state prior to October 21, 1976.

Section 9. Section **72-5-302** is amended to read:

**72-5-302. Rights-of-way across federal lands -- Title -- Presumption -- Scope.**

- (1) This part applies to all R.S. 2477 rights-of-way.
- (2) The state and its political subdivisions have title to the R.S. 2477 rights-of-ways in accordance with Sections 72-3-102, 72-3-103, 72-3-104, 72-3-105, and 72-5-103.
- (3) (a) Acceptance of a right-of-way for the construction of a highway over public lands, not



reserved for public uses, is presumed if the state or a political subdivision of the state makes a finding that the highway was constructed and the right-of-way was accepted prior to October 21, 1976.

(b) The existence of a highway establishes a presumption that the highway has continued in use in its present location since the land over which it is built was public land not reserved for public use.

(4) (a) Unless specifically determined by the state or a political subdivision of the state with authority over the R.S. 2477 right-of-way, the scope of the R.S. 2477 right-of-way is that which is reasonable and necessary to ensure safe travel for all uses ~~[that occurred before October 21, 1976]~~ according to the facts and circumstances.

(b) The scope of the R.S. 2477 right-of-way includes the right to widen the highway as necessary to accommodate the increased travel associated with those uses, up to, where applicable, improving a highway to two lanes so travelers can safely pass each other.

~~[(c) The width of an R.S. 2477 right-of-way used for vehicular travel may not be less than the setback standards for wilderness boundaries along existing roads as described in Bureau of Land Management Manual H-8560-1, Management of Designated Wilderness Areas, dated July 27, 1988, as follows:]~~

~~[(i) high standard paved highways shall be 300 feet from the centerline;]~~

~~[(ii) high standard logging roads shall be 100 feet from the centerline, and]~~

~~[(iii) low standard logging, jeep, maintenance, dirt roads used for right-of-way, or similar roads shall be 30 feet from the centerline.]~~

(5) The safety standards established by the Department of Transportation in accordance with Section 72-6-102 apply to all determinations of safety on R.S. 2477 rights-of-way used for vehicular travel.

#### Section 10. **Effective date.**

If approved by two-thirds of all the members elected to each house, this act takes effect upon approval by the governor, or the day following the constitutional time limit of Utah Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.

